

**STREET LIGHT POLE CONTACT & FRANCHISE AGREEMENT
BY AND BETWEEN THE
CITY OF SUNNYVALE, CALIFORNIA
AND
METROFI, INC.**

This Street Light Pole Contact & Franchise Agreement ("Agreement") is made and entered into on this ____ day of _____, 2004 ("Effective Date"), by and between the City of Sunnyvale, a California Municipal Corporation, and MetroFi, Inc., 2465 Latham Street, Suite 300, Mountain View, CA 94040, a Delaware corporation ("Company"). City and Company may be referred to herein individually as a "Party", collectively as the "Parties" or "City" or "Company" as defined below.

RECITALS

- A. The City owns, operates, and maintains street light poles, arms, and other related equipment and land rights under its street light poles or arms ("Street Light Poles").
- B. City has the ability to control the conditions under which third parties are allowed to contact its Street Light Poles and street lights attached to street light arms attached to utility poles.
- C. Company desires to attach its radio, wire, cable, fiber, amplifiers, switching, processing and transmission and distribution components of its broadband telecommunications system ("Communications Equipment") to the City's Street Light Poles.
- D. Pursuant to Article XVI of the Sunnyvale City Charter, any person wishing to use public streets, ways, alleys, or places in the City of Sunnyvale for purposes of providing communication services must obtain a grant of franchise from the City Council.
- E. Because it is impractical to execute a separate agreement in each instance which Company desires to contact the Street Light Poles, it is the intent of the Parties that this Agreement shall be the all inclusive master agreement regarding such contacts for the duration of this Agreement.

AGREEMENT PROVISIONS

In consideration of the above referenced recitals and the following mutual covenants, agreements, and obligations of the Parties, Company and City agree as follows:

1. SCOPE OF ALLOWED USE OF CITY STREET LIGHT POLES

Company shall place its Communications Equipment on the City's Street Light Poles or street light arms attached to utility poles and shall perform the work required to install its Communications Equipment promptly and in such manner as not to interfere with the

services of the City's preexisting third party contacts. Use of any Street Light Poles under this Agreement shall be confined to Communications Equipment, for which the City has specifically given Company written permission to install in accordance with this Agreement. Due to capacity and safety concerns, only one radio may be mounted per Street Light Pole.

2. APPLICATION TO PLACE COMMUNICATIONS EQUIPMENT

Whenever Company desires to place Communications Equipment on any Street Light Poles, Company shall make a written Request to the City for permission to attach to specific Street Light Poles or street light arms attached to utility poles. This written Request shall also include, but not be limited to, the location of specific Street Light Poles or street light arms attached to utility poles, and the description of equipment to be attached. Upon receipt of request, City shall have right to approve locations, and afterwards, to inspect Company installation of equipment onto City Street Light Poles.

3. COORDINATION WITH THIRD PARTIES

The City shall be responsible for identifying and notifying all third party users of any Street Light Poles of any proposed new contacts or modifications of existing contacts. Company shall coordinate directly with third party users any work that may be required by the third party users to accommodate Company's proposed work. Any costs associated with such modification of third party user's equipment are the responsibility of Company.

4. ACCESS

For the term of this agreement, Company is authorized to use any easements of City and public rights of way for access to Street Light Poles to which Communications Equipment is attached pursuant to this Agreement so long as such use is not in conflict with City's present and future use. The right to access the Street Light Poles granted by this Agreement is non-exclusive.

5. INSTALLATION OF NEW STREET LIGHT POLES

If Company needs overhead Communications Equipment in location(s) where the City does not have Street Light Poles, Company shall notify City of its need for such Street Light Poles and shall make a written Request under this Agreement for permission to place Communications Equipment on the new Street Light Poles. City, at its sole discretion and at the expense of Company, may install Street Light Poles in such location.

6. APPROVAL TO PLACE COMMUNICATIONS EQUIPMENT

6.1. After a written Request has been submitted by Company and has been reviewed and approved by the City, permission to place the Communications Equipment described in the Request on the Street Light Poles identified in the Request shall be granted by the City in writing, as expeditiously as feasible, but within thirty (30) days after the receipt of a completed Request.

- 6.2 If, in the judgment of the City, the accommodation of any of Company's Communications Equipment necessitates either the rearrangement of City equipment located on a Street Light Pole or the replacement of a Street Light Pole, the City will notify Company of the necessary changes and the estimated cost of the work required. At City's option, City may require Company to perform the requested work on behalf of the City to City's specifications. Any services that Company agrees to provide City shall be memorialized in a separate agreement. Alternatively, City may perform the work at Company's sole expense. Company shall reimburse City for the total cost of the work including all direct employee wage and benefit costs, cost of materials, and cost of equipment used. City will make reasonable efforts to notify Company of any extraordinary cost before such costs are incurred. Prior to commencing any work, City may require Company to pay a deposit equal to the estimated total cost of the work. City shall not be responsible to Company for any loss sustained by Company by reason of the failure of City or any third party to perform work contemplated by this section.
- 6.3 After completion of any work required by the City to make the Street Light Poles ready for placement of the Communications Equipment and after receiving written approval to proceed from City, Company shall have the right to install, maintain and use Communications Equipment described in its Request, subject to any reasonable technical conditions in the City's written approval. Before commencing any such installation, Company shall notify City of the time when it proposes to do said work at least five (5) business days in advance so that City may arrange to have its representative present when such work is performed. Company shall also complete such installation within such reasonable time limit, subject to weather delays, as may be specified in each application and written approval. If the installation is not substantially completed in the specified time limit, then upon notice by City, the Request and approval shall be considered withdrawn and a new Request must be submitted for approval.
- 6.4 Nothing in this Agreement shall be construed to obligate City to grant Company permission to use any part of the Street Light Poles, provided that such use shall not be denied or delayed in a discriminatory manner.

7. ADDITIONAL ATTACHMENTS

Company shall not have the right to place, nor shall it place, any additional Communications Equipment in contact with any Street Light Poles without first making Request for and receiving written permission to do so from City as described above. Company may modify or rearrange existing attachments without being charged an additional attachment fee; for any new attachments the applicable fee shall be charged.

8. INSTALLATION AND MAINTENANCE OF ATTACHMENTS

Company shall, at its own sole risk and expense, install and maintain Communications Equipment on Street Light Poles in safe and good repair and in accordance with the

requirements of the City and all municipal, state and federal laws, ordinances and regulations.

9. IDENTIFICATION OF COMMUNICATIONS EQUIPMENT

Company shall identify the Communications Equipment newly installed or serviced at each contact point by means of a marking method mutually agreed upon by the Parties. Such identification shall be visible from ground level. Company shall provide the City a 24-hour contact phone number to enable City to report any concerns regarding the Communications Equipment. In the event that City reports such concerns to Company, Company shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to City's operations caused by such Communications Equipment at no cost to City unless caused by City.

10. RESERVATION OF RIGHTS

City reserves the right to operate and maintain Street Light Poles to fulfill its service requirements to its residents. City shall not be liable to Company for any interruption to Company's service or for any interference with the operation of Company's equipment arising in any manner from the use of Street Light Poles by City in accordance with this Agreement, provided that City shall give Company fifteen (15) days advance notice of any non-emergency work which affects Company's Communications Equipment.

11. NO CITYSHIP OR VESTED INTEREST CREATED

No use of any Street Light Poles under this Agreement shall create or vest in Company any ownership interest, tenancy, estate or any other interest in the Street Light Poles and Company's rights therein shall be and remain a license. Each Party shall pay the cost of the installation and maintenance of its own facilities. Nothing in this Agreement shall be construed to compel City to maintain any Street Light Poles for a period longer than demanded by its own service requirements.

12. DAMAGE TO CITY PROPERTY

Company shall exercise special precautions to avoid causing damage to Street Light Poles and/or any City property. Company shall assume responsibility for any loss from such damage caused by Company. Company shall make an immediate report of the occurrence of any such damage to City and shall, on demand, reimburse City for the total cost incurred in making repairs including all direct employee wage and benefit costs, cost of materials, and cost of equipment used.

13. USE OF EASEMENTS

For the term of this Agreement, Company is authorized to use any easements and rights of way of City for access to Street Light Poles to which Communications Equipment is attached pursuant to this Agreement so long as such use is not in conflict with City's present and future use, and City is able to authorize or suffer legitimately the same.

14. REPLACEMENT OF STREET LIGHT POLES

- 14.1 In the event any Street Light Poles occupied by Company under this Agreement are to be replaced, repaired or altered, Company shall, at its own sole risk and expense, upon notice from City, relocate or replace its Communications Equipment or transfer it to replacement Street Light Poles or perform any other work in connection with said equipment that may be required by City.
- 14.2 In cases of emergency, City may, at Company's sole expense, relocate, replace or renew the Communications Equipment, or transfer it to replacement Street Light Poles or perform any other work required to serve the needs of City. City shall make commercially reasonable efforts to notify Company of the relocation of its Communications Equipment in the event of an emergency, prior to the relocation of that equipment.

15. REMOVAL OR VACATION

Should Company remove its Communications Equipment from any of City's Street Light Poles, Company shall, within ten (10) days after such removal, give notice thereof to City, specifying the poles vacated and the location thereof, as well as the date of removal. Removal of all Communications Equipment from any Street Light Poles without its replacement or substitution by Company within thirty (30) days shall constitute a termination of Company's right to use such Street Light Poles without making new request therefore.

16. STREET LIGHT POLE REMOVAL NOTICE

- 16.1 If City desires at any time to remove any Street Light Pole, City shall, except in cases of emergency, give Company notice, in writing, to that effect at least thirty (30) days prior to the date on which it intends to remove such Street Light Pole. If Company cannot accommodate the removal of the Communications Equipment within the thirty (30) day notice period then the Parties will either (1) have the City remove and store Company's equipment or (2) shall negotiate and mutually agree upon a longer timeframe for removal of the Street Light Pole and Company's equipment, on a case by case basis. The removal of the Communications Equipment shall be at the sole risk and expense of Company.
- 16.2 If City is required by law or ordinance to remove any Street Light Pole or group of Street Light Poles, or for any reason desires that any particular Street Light Pole be removed without replacement, City shall so inform Company in writing. If City informs Company of its desire to remove the Street Light Pole, then Company shall remove the Communications Equipment from the Street Light Pole before City's intended removal date. The removal of the Communications Equipment shall be at the sole risk and expense of Company. City shall have no obligation to provide any alternate Street Light Pole or any other facility for the relocation of Company's Communications Equipment.

- 16.3 In the event of an emergency, City may remove such Street Light Pole and shall in such case immediately notify Company of the action taken. City shall make commercially reasonable efforts to notify Company of the removal of its Communications Equipment, prior to the emergency removal of that equipment.

17. RIGHT TO INSPECT

City shall have the right to inspect each new installation of Communications Equipment attached to Street Light Poles and to make periodic inspections at the City's discretion as conditions may warrant. Such inspections shall not relieve Company of any responsibility, obligation or liability assumed under this Agreement.

18. COMPENSATION

As compensation for the right to install and maintain Communications Equipment on Street Light Poles, Company shall pay to the City fees calculated as set forth as follows:

- 18.1 Removal of Original Metricom Devices. Company shall remove, at no cost to City, existing Metricom devices from Street Light Poles on which Company installs Communications Equipment. At the City's request, Company shall also remove existing Metricom devices from other Street Light Poles at a cost of thirty-five dollars (\$35.00) per pole, which Company may apply as a credit toward future annual Franchise Communication Fees. Company shall return any and all Metricom devices to City for disposal.
- 18.2 Security Deposit. Before the Company installs Communications Equipment under this Agreement, Company shall procure and provide the City with a pre-paid security deposit in the form of Certificate of Deposit, letter of credit, or performance bond naming the City as obligee, or such other security as may be acceptable to the City, in the amount of three thousand six hundred dollars (\$3,600.00) for up to 100 Street Light Poles. An additional (\$900.00) Security Deposit shall be prepaid for each block of 25 Street Light Poles ("Block"). All Security Deposits shall be paid in advance. The Security Deposit guarantees and assures the faithful performance of Company's obligations under this Agreement.
- 18.2.1 The City shall have the right to draw against the security in the event of a default by Company or in the event that Company fails to meet and fully perform any of its obligations under this Agreement. Within thirty (30) days of receipt of written notice from the City, Company shall renew or replace such sums of money as shall bring the security deposit or alternative form of security current to the full amount stipulated herein.

18.2.2 In the event Company terminates this agreement or defaults under the terms of Section 23 (Term and Termination), City will return the Security Deposit within 30 days of removal of all Communications Equipment on condition that all Communications Equipment is removed from said Street Light Poles in a safe and non-harmful manner, and all accounts are current.

18.2.3 Pre-Payment of Security Deposit Required. Under this Agreement, Company agrees to pre-pay the Security Deposit prior to any attachment of Communications Equipment to Street Light Poles, and no later than seven (7) days of the effective date of this Agreement.

18.3 Annual Franchise Fees. Company shall pay the City an annual Communication Franchise Fee of Thirty-six Dollars (\$36.00) per Street Light Pole. The fee shall be paid annually as set forth in Section 18.5. The fee will be adjusted each year in accordance with the Consumer Price Index as set forth in Section 19. The applicable Franchise Fee will be charged each time a radio attachment or other piece of equipment contacts a Street Light Pole. The City agrees that in no event shall the applicable Franchise Fee exceed the Street Light Pole attachment fee charged to any other commercial user attaching like equipment or facilities in the Street Light Pole's communications space by agreement with the City entered into or renewed after the date of this Agreement.

18.4 Electricity Charges. Company shall be solely responsible for the payment of all electrical utility charges and connection charges to the applicable utility company based upon the Communications Equipment usage of electricity and applicable tariffs. Company agrees to reimburse City for any additional electrical utility charges incurred by the City solely based upon attachment of the Communications Equipment, provided that the City shall furnish to Company sufficient documentation from the utility company indicating with reasonable certainty that the additional charge was directly attributable to Company's Communications Equipment. If Company asserts that the documentation provided by City is insufficient, City may require that Company install, at Company's expense, electrical meters or other equipment or devices necessary to calculate the electrical usage of the Communications Equipment. The City will sign a Right of Entry Agreement with PG&E in the form attached hereto and incorporated herein by this reference as Exhibit "A".

18.5 Payment Schedule. As compensation for the right to install and maintain Communications Equipment on Street Light Poles, Company shall pay to the City fees calculated as set forth in Paragraph 18.3 incorporated herein by reference.

18.5.1 Each such payment shall continue at the level referred to above until adjusted as provided in this Paragraph. The amount of the fee due to City from Company for any year shall be based on the number of Communications Equipment defined in Paragraph 18.8 within 30 days of each anniversary of the Effective Date of this Agreement.

18.5.2. The payment dates provided for in this paragraph may be modified by the City upon written notice to Company. City may render an invoice for amounts due, but failure by the City to render an invoice does not relieve Company from its obligation to pay the fees due.

- 18.6 Overdue Payments. Any payment not received by the City on or before the due dates specified in Section 18.5.1 shall be considered in default and simple interest on unpaid, undisputed amounts of the payment shall accrue, until paid, at one percent (1%) per month.
- 18.7 Payment for Renewal Term. At the cessation of the Initial Term, Company may elect to renew this Agreement ("Renewal Term") as set forth in Paragraph 23.1 for that Renewal Term and at the Rate Schedule set forth in Section 18.
- 18.8 Baseline Report. The compensation in this Section 18 shall be based upon the pro-rated number of Communications Equipment estimated to be attached to Street Light Poles between Effective Date of this Agreement and the last day of December submitted by Company in writing to City not later than December 31, 2004.
- 18.9 Inventory Report. Thereafter, an annual Inventory Report shall be submitted by Company to City (under terms of Section 24, Notice), in writing, on or before the first (1st) day of January setting forth the total number of Street Light Pole attachments utilized by Company. City shall have the right to audit and verify the Baseline Report and/or Inventory Report to assure the accuracy of the number of Street Light Pole attachments stated.
- 18.10 Payment Disputes. If the Company does not agree upon the amount owed, then it shall pay the undisputed amount and shall make a claim as set forth in Section 22 below. Interest at the legal rate shall be awarded on that amount unpaid but actually due.
- 18.11 Penalty. Should City determine that the actual number of Communications Equipment installed exceeds the number in the Inventory Report, then Company shall be subject to a \$30.00 fine per Communications Equipment installation in excess of the number stated in the Inventory Report.

19. MODIFICATIONS TO PAYMENTS

The Street Light Pole Franchise Fee and any new Security Deposit rate per Block of Street Light Poles shall be increased annually on each anniversary date of this Agreement, including any option period, based on the percentage of change in the U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index, all items, 1982-1984=100, San Francisco-Oakland-San Jose, Consumer Price Index for all Urban Consumers ("CPI-U") compared to the October CPI-U for October, 1995. The amount of any annual adjustment in such payments shall not exceed five (5%) of the rate in effect in the previous year.

20. INSURANCE

Company shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "B" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "B."

21. HOLD HARMLESS/INDEMNIFICATION

Company agrees to indemnify and hold harmless City, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of Company, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to Company's performance under this Agreement.

22. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties:

22.1 Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue ("Request for Internal Resolution"). A written Request for Internal Resolution shall be given by either Party within thirty (30) calendar days of the Parties' knowledge of the claim. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of the Request for Internal Resolution.

- 22.2 Notice. Senior management officials are required to only meet once, but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the issue. If the Parties do not successfully resolve the dispute by Internal Resolution, then the Party finding the Internal Resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting for Internal Resolution, and shall not be given any later than ninety (90) calendar days following the completion of the first Internal Resolution meeting. The Request for Mediation shall be sent certified mail-return receipt requested to the other Party, and shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) business days listing any issues it deems appropriate for submission to the Mediator.
- 22.3 Mediation. Any controversies between City and Company regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.
- 22.4 Mediator. Within twenty (20) calendar days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the Presiding Judge of the Superior Court of Santa Clara County, requesting that the Judge appoint a mediator from the enclosed list. If the Superior Court refuses to appoint a mediator within ten (10) business days, the Parties shall make the same request of the nearest Judicial Arbitration and Mediation Service, paying whatever fee is required for making the appointment. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 22.5 Costs. The costs of mediation shall be borne by the Parties equally.
- 22.6 Discovery. If, during any dispute between the Parties, a demand is made by Company for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Lessee.

- 22.7 Condition Precedent to Filing Suit. Except as provided in Section 32 below, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23. TERM AND TERMINATION

- 23.1. This Agreement shall become effective on the Effective Date and shall continue in effect for five (5) years or until the occurrence of one of the following two events:
- 23.1.1. In the event one Party is in default of this Agreement, the non-defaulting Party may provide notice of termination as set forth in Paragraph 30; or
- 23.1.2 Upon the end of five (5) years from the Effective Date. The Term may be renewed for two (2) additional successive five year periods of time upon 6 months' prior written notice by Company to the City, provided that Company is not in default under this Agreement and, subject to the written consent of City.
- 23.2 Upon receipt of a notice of termination, this Agreement shall terminate at the date specified in such notice, which date shall not be less than one (1) year from the date of such notice. Company, at its own expense, shall remove the Communications Equipment from the Street Light Poles within one hundred and eighty (180) days of said date of termination.
- 23.3 In the event that Communications Equipment which has been in place and previously used by Company is not utilized by Company for a period of six (6) consecutive months, City may terminate this entire Agreement upon providing Company ninety (90) days prior written notice of City's intent to so terminate this Agreement. Should Company fail to remove the Communications Equipment, or some part thereof, from City's Street Light Poles within said ninety (90) days, City may remove any of the Communications Equipment so remaining, and shall be reimbursed for the equipment and labor costs incurred in connection with removing the Communications Equipment within thirty (30) days of returning such Communications Equipment to Company or making such Communications Equipment available to Company for pickup within the City limits.

24. NOTICE

All notices given or which may be given pursuant to this Agreement must be in writing and transmitted by United States mail or by private delivery system as follows:

To City at: Director of Information Technology
 City of Sunnyvale
 650 West Olive Avenue
 Sunnyvale, CA 94086
 or by facsimile at: (408) 730-7655

With copies to: Manager, Information Technology Services

To Attaching
Party at: Attn: Contracts Administrator
 MetroFi, Inc.
 2465 Latham Street, Suite 300
 Mountain View, CA 94040
 or by facsimile at: (650) 810-8001

Notice may also be provided to such other address as either Party may from time to time designate in writing, or to those in Exhibit C, attached and incorporated by reference. Any facsimile transmission by either Party must be followed up by a copy sent by mail.

25. ASSIGNMENTS

Company shall not assign this Agreement, or any portion of it, without the prior written permission of City which shall not be unreasonably withheld or delayed, and any such assignment made without such consent shall be void and shall not operate to relieve Company from any of its obligations or liabilities under this Agreement.

26. AMENDMENTS

This Agreement may be amended from time to time. Any amendment shall be written and subscribed as herein. It is understood that all agreements with the City of Sunnyvale are subject to approval of the City Council before City shall be bound thereby.

27. THIRD PARTY MODIFICATIONS

This Agreement shall be subject to such changes or modifications as may be required or authorized by any non-City affiliate third party regulatory commission in the exercise of its lawful jurisdiction, provided that neither Party is hereby consenting to its contract rights being impaired, and any modification, revision, renewal or extension of this Agreement shall so state.

28. SERVICE WARRANTY

Company hereby warrants that it has acquired, and maintains during the term of this Agreement, all necessary authorization required to provide services set forth in this Agreement within the City. If the nature and character of Company's Communications Equipment changes in the future, Company shall notify City, in writing, at least thirty (30) days in advance of its intent to change the nature of its Communications Equipment. The Parties agree that the terms of this Agreement are based on the nature of equipment attached to the Street Light Poles. Company acknowledges that any unauthorized change in the nature of Communications Equipment, beyond the definition of Communications Equipment specified in this Agreement, shall require the renegotiation of the terms and conditions of this Agreement.

29. DEFAULT AND REMOVAL OF COMMUNICATIONS EQUIPMENT

- 29.1 If Company should default in the performance of any work which it is obligated to do under this Agreement, except the work of removing its Communications Equipment from any Street Light Pole within the time allowed for such work, City may elect to do such work at Company's sole expense and Company, on demand, shall reimburse City for the cost incurred in removing Communications Equipment including all direct employee wage and benefit costs, cost of materials, and cost of equipment used.
- 29.2 If Company should default in the removal of its Communications Equipment or property from any of the Street Light Poles within the time allowed for such removal, City shall give written notice to Company, that City will remove and store the Communications Equipment or property at Company's sole expense in which event Company shall reimburse City on demand for the entire expense thereby incurred. If Company does not claim said equipment within one hundred eighty (180) days, that equipment shall become the sole property of City in which event title to said equipment and property shall vest in City as of one hundred eighty (180) days after the date of such written notice.
- 29.3 Nothing herein contained shall be construed to make the City or other third parties liable for damage to equipment or service of Company.

30. DEFAULT PROCEDURES

If Company defaults in any of the following particulars:

- 30.1 Fails to pay the fees prescribed in Section 18 hereof with reasonable promptness as the same shall become due; or
- 30.2 Breaches any other term or condition of this Agreement;

then City shall give Company written notice, either by mail or personal service, setting forth the nature of the default and a demand that said default be cured and remedied. If

Company fails, neglects or refuses within thirty (30) days after the giving of said notice to cure or remedy the default, or commence and diligently continue such cure, then City, upon notice and without suit or other proceedings, may terminate this Agreement and cancel and annul the rights and privileges granted herein.

31. NONEXCLUSIVE LICENSE

The license and right to access the Street Light Poles granted by this Agreement is non-exclusive. Company shall not interfere with any other license and right of access granted by City to any other third party.

32. WAIVER AND REMEDIES

Failure of either Party to enforce any provision of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect. The remedies expressly provided in this Agreement shall be in addition to any other remedies available at law or in equity.

33. USE SUBJECT TO PRIOR RIGHTS AND OBLIGATIONS

Nothing in this Agreement shall be construed as affecting any rights or privileges previously conferred by City or any other owner of an interest in or of facilities on the Street Light Poles, by contract or otherwise, upon others to use the Street Light Poles covered by this Agreement; and City and each other such City shall have the right to continue and extend such rights or privileges consistent with this Agreement. The privileges herein granted to Company shall at all times be subject to any such existing contracts and arrangements. Any rights and privileges herein conferred are also subject and subordinate to the prior right of City to use all its easements rights of way and property interests and governmental powers in the performance of its duties as a municipal utility and a governmental entity.

IN WITNESS WHEREOF, the Parties acknowledge and accept the terms, conditions and obligations of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SUNNYVALE, California,
a Municipal Corporation

APPROVED AS TO FORM:

City Attorney

By: _____

Amy Chan
City Manager

Date: _____

ATTEST:

City Clerk

MetroFi, INC.
a Delaware Corporation

By: _____

Chuck Haas

Date: _____

**BY AND BETWEEN THE
CITY OF SUNNYVALE, CALIFORNIA
AND
METROFI, INC.**

EXHIBIT A

PGE Right of Entry Agreement



Right of Entry Agreement

Distribution
Original: Applicant
Copy: Division

References:
E-PM#
Retirement#

[CITY/COUNTY/STATE] of _____ (Agency), has elected to enter into this Right of Entry Agreement (Right of Entry) with PACIFIC GAS & ELECTRIC COMPANY (Licensee), a California corporation.

WHEREAS, Agency owns, operates and maintains certain overhead electric streetlight facilities located in the geographic areas of its political jurisdiction, including poles, arms, other related equipment (the "Street Light Poles");

WHEREAS, Agency has entered into a Street Light Pole Contact Agreement with MetroFi, Inc., a Delaware corporation ("MetroFi") relating to the attachment of MetroFi's radio, wire, cable, fiber, amplifiers, switching, processing and distribution components of MetroFi's broadband telecommunications system ("Communications Equipment") to the Agency's Street Light Poles or street light arms attached to utility poles;

WHEREAS, Licensee has entered into a Unmetered Service Agreement with MetroFi relating to Licensee's provision of electric service to MetroFi's Communication Equipment;

WHEREAS, Licensee requires access to MetroFi's Communication Equipment for the purpose of inspection, field or bench tests, and in the event of default under the Unmetered Service Agreement between Licensee and MetroFi, to disconnect or remove the Communication Equipment from the Agency's Street Light Poles; and

WHEREAS, Licensee is responsible to disconnect electric load under certain conditions, and Licensee seeks to maintain its right with respect to the energy connection to MetroFi's Communication Equipment, while at the same time respecting the Street Light Pole Contact Agreement entered into between Agency and MetroFi.

NOW THEREFORE, Agency and Licensee agree to cooperate by entering into this Right of Entry to allow access to the Street Light Poles subject to the following terms and conditions:

1. Agency hereby grants to Licensee and Licensee's agents, consultants, and contractors access to the Street Light Poles, including ingress and egress to such Street Light Poles on any property owned or controlled by Agency, and any easements or rights of way of Agency. Licensee, at its sole risk and expense, shall be entitled to inspect, field or bench test, disconnect (including the right to sever wire(s) leading from the photocell or at other point on Street Light Pole to the Communication Equipment) or remove the Communication Equipment, at any time and from time to time during the entire term of this Right of Entry. Licensee shall perform all work in compliance with applicable federal, state, and local laws, rules and regulations, provided however, that Licensee shall not be required by Agency to obtain any further licenses, encroachment permits or other forms of permission for such work. Any work performed by Licensee shall not unnecessarily interfere with the operation or use of any Agency-owned property by any Agency departments. Licensee or its contractor may access the Communication Equipment from any Street Light Poles upon written notice to Agency at least five (5) business days in advance of the work. Licensee shall complete such work within a reasonable time limit, subject to weather delays, as may be specified in each application and written approval. Upon completion of the work, the Licensee, and its, employees, contractors, and agents shall leave the area in a clean/orderly condition, including removal of all debris, litter and other materials, provided however, that nothing in this Right of Entry shall obligate Licensee remove any Communication Equipment installed on Agency's Street Light Poles.
2. This Right of Entry shall be irrevocable and shall continue in full force and effect during its entire term. The term shall commence on the date of full execution of this Right of Entry and continue until one hundred and eighty (180) days after the last date on which MetroFi's rights to attach to the Street Light Poles under the Street Light Pole Contact Agreement terminate or expire, which, absent an earlier termination under the terms thereof, shall be the Expiration Date specified in the Street Light Pole Contact Agreement. Agency agrees to provide Licensee within written notice within thirty (30) days of termination of the Street Light Pole Contact Agreement.
3. This Right of Entry shall not in anyway whatsoever create or vest any ownership interest, tenancy or other interest in the Street Light Poles and Licensee's rights thereto shall remain a license.
4. Licensee shall not assign this Right of Entry, or any portion of it, without the prior written consent of Agency, which shall not be unreasonably withheld or delayed.
5. Licensee shall indemnify and hold harmless Agency and its officers from all liability for damages proximately resulting from any operations under its franchise with Agency.

IN WITNESS WHEREOF, the parties hereto, being duly authorized, have executed this Right of Entry Agreement on the ____ day of _____, 20__.

[CITY/COUNTY/AGENCY]

PACIFIC GAS & ELECTRIC COMPANY

Name _____

Name _____

Title _____

Title _____

Signature _____

Signature _____

**STREET LIGHT POLE CONTACT AND FRANCHISE AGREEMENT
BY AND BETWEEN THE
CITY OF SUNNYVALE, CALIFORNIA
AND
METROFI, INC.**

**EXHIBIT B
INSURANCE COVERAGE REQUIREMENTS**

Company shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Company, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Company shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required if Company owns any vehicles. Otherwise, non-owned and hired automobile liability coverage is required.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The Company shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; premises owned, occupied or used by the Company; or automobiles owned, if any, leased, hired or borrowed by the Company. The coverage shall contain no special limitations on the scope of protection afforded to the City of

Sunnyvale, its officers, employees, agents or volunteers, except as follows. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2872 of the Civil Code of California.

2. For any claims related to this project, the Company's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Company's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not effect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days' prior written notice has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Company shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

City of Sunnyvale and MetroFi Inc.

Street Light Pole Contact & Franchise Agreement

STREET LIGHT POLE CONTACT AND FRANCHISE AGREEMENT

**BY AND BETWEEN THE
CITY OF SUNNYVALE, CALIFORNIA
AND
METROFI, INC.**

**EXHIBIT C
PERSONNEL CONTACT FORM**

For City of Sunnyvale:

Primary Contact and during normal business hours for General Administration:

Name: Marilyn Crane
Title: Manager, Information Technology Services
Address: 650 West Olive Avenue, Sunnyvale, CA 94086
Telephone: 408-730-7557
Facsimile: 408-730-7655
Email: mcrane@ci.sunnyvale.ca.us

Non-Emergency Service Requests during normal business hours (6:30 a.m. – 4:30 p.m., M-F) and after-hours:

Name: Public Works Field Services Answer Point
Telephone: 408-730-7510
Facsimile: 408-736-1611
Email: ntula@ci.sunnyvale.ca.us with copies to:
jcraig@ci.sunnyvale.ca.us and vrose@ci.sunnyvale.ca.us

Emergency Service Requests (24 hours):

Contact the Sunnyvale Department of Public Safety Dispatch Center at 408-730-7181.
State that the problem is a street light emergency for the “sewer stand-by” employee.
The Dispatch Center will contact the appropriate Public Works employee.

For MetroFi, Inc.

Primary Contact:

Name: Lee Hambro
Title: Sr. Manager of Operations
Address: 2465 Latham Street, Mountain View, CA 94040
Telephone: (650) 218-4647
Facsimile: (650) 810-8001
Email: lhambro@metrofi.com

Secondary Contact:

Name: Mike Maley
Title: Operations Specialist
Address: 2465 Latham Street, Mountain View, CA 94040
Telephone: (650) 867-4154
Facsimile: (650) 810-8001
Email: mmaley@metrofi.com